IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.**244** OF **1989**

The State of Maharashtra)
at the instance of the Special)
Land Acquisition Officer, Panvel)
(Original Opponent)) ...Appellant

V/s

Bala Rama Kudavkar)
(Original Claimant)) ...Respondent.

Mr. K.K. Tated, AGP for the appellant - State.

Mr. N.B. Shah with Mr. T.K. Patil for the respondent.

ALONG WITH
CIVIL APPLICATION NO.2660 OF 2003
IN
FIRST APPEAL NO. 244 OF 1989

The State of Maharashtra)
(Through the Special Land)
Acquisition Officer, Metro)
Centre No.VIII, Panvel,)
District - Raigad) ...Applicant.

V/s

Shri Bala Rama Kudavkar)
since deceased through his)
Legal Heirs:-)
1. Smt Bayobai Bala)
Kudvakar and Ors.) ...Respondents.

Mr. K.K. Tated, AGP for the Applicant - State.

Mr. N.B. Shah for the respondents.

ALONG WITH
FIRST APPEAL NO.75 OF 1989

Bala Rama Kudavkar)
(Original Claimant)) ...Appellant.

V/s.

The State of Maharashtra)
through the Spl. Land Acq.)
Officer, Raigad.)
(Original Opponent)) ...Respondent.

Mr. N.B. Shah for the appellant.

Mr. K.K. Tated, AGP for the respondent - State.

ALONG WITH
CIVIL APPLICATION NO. 756 OF 2005
IN
FIRST APPEAL NO. 75 OF 1989

Bala Rama Kudavkar)
since deceased through)
his legal heirs and legal)
representatives)
1-A Smt. Bayobai Bala)
Kudavkar and Ors.) ....Petitioners.

V/s

The State of Maharashtra)
(through the Special Land)
Acquisition Officer, Metro)
Centre No. XIII, Panvel, Dist.)
Raigad.) ....Respondent.

Mr. N.B. Shah for the petitioners

Mr. K.K. Tated, AGP for the respondent - State.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 23rd September, 2005

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Civil Application No. 2660 of 2003 in First Appeal No.244 of 1989 is allowed. Delay in filing the application for bringing the heirs of the respondent - claimant on record is condoned for the reasons stated

in the Civil Application. The heirs of the respondents are already represented through their lawyer Shri T.K. Patil. They have also filed similar application for brining the heirs of the appellant in First Appeal No. 75 of 1989 on record being Civil Application No. 756 of 2005. The said application is also allowed and the heirs are brought on record and the delay in bringing the heirs on record is condoned for the reasons stated in the Civil Application.

2. Heard.

3. The First Appeal No.244 of 1989 is filed by the State of Maharashtra and First Appeal No.75 of 1989 is filed by the original claimant.

4. Brief facts which are relevant for the purpose of deciding the above First Appeals are that the notification under section 4 of the Land Acquisition Act, 1894 (hereinafter called "the Acquisition Act") was issued on 03/02/1970. Notice under section 9(3)(4) was served on the claimant on 9/7/1986. No claim was made in reply to the said notice. The Special Land Acquisition Officer granted compensation @ Rs 6,500/- per acre for the land bearing Survey No.5/3 and @ 7,500/- per acre for the remaining area.

Against the said order, reference was filed by the claimant on 21/10/1986. The Reference Court awarded compensation @ Rs 5/- per sq. meter and also granted interest on the enhanced compensation.

5. The learned Additional Government Pleader, appearing on behalf of the State, has firstly submitted that the reference which was filed in the Court of Civil Judge (Senior Division), Raigad at Alibag being LAR No. 77 of 1986 was barred by limitation and, as such, the Reference Court had no jurisdiction to entertain the reference which was barred by limitation. He submitted that the admitted facts which are reflected from the reference application which is filed by the claimant are that the notice under section 12(2) of the Acquisition Act was received by the claimant on 09/07/1986. The compensation was received by him on 23/08/1986 and the copy of the award was received on 8/10/1986 and, thereafter, reference was filed on 21/10/1986. It was submitted that, therefore, the reference application was not filed within six weeks from the date of service of the notice under section 12(2) and, therefore, the reference application was barred by limitation. He submitted that the Reference Court did not have jurisdiction to condone the delay which was

caused in filing the Reference Application. In support of the said submission, he relied on the judgment of the Apex Court in the case of State of Punjab and anr. Vs. Satinder Bir Singh reported in **(1995) SCC 330** and the Full Bench Judgment of this Court in the case of Suresh Marutrao Jadhav Vs. State of Maharashtra & Anr reported in **2001 Vol. 103(4) Bom. L.R. 897**.

6. The learned Counsel submitted that, secondly, since no reply was filed to the notice under section (3)(4) of the Acquisition Act and no claim was made, the provisions of unamended section 25(2) of the Acquisition Act would be attracted and the Reference Court, therefore, did not have jurisdiction to grant any amount exceeding the amount which was awarded by the Collector. In support of the said submission, he relied on the Division Bench Judgement of this Court in the case of State of Maharashtra Vs. Dhanaji Kamalu Joshi in First Appeal No.430 of 1993 dated 25/08/2005 and 01/09/2005.

7. The learned Counsel appearing on behalf of the respondent vehemently opposed the submissions which were made by the learned Additional Government Pleader appearing on behalf of the State. He submitted that a

group of appeals starting with First Appeal No.462 of 1990 which was filed by the State of Maharashtra in respect of the Land Reference Cases arising out of the award which was passed in respect of the land under the same notification had been dismissed by the Division Bench of this Court on merits by its judgment and order dated 18/07/2001. He submitted that in view of the confirmation of the Land Reference Award by this Court, it was not open for the Government to challenge the said award on new grounds.

8. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the respondent. In the said group of First Appeals which was filed the Government the point which had been raised now in these appeals was not raised and since the submission which is made on behalf of the Government is on the question of law, in our view, the appellant - State is entitled to raise this issue and this Court while exercising its jurisdiction under Order XLI Rule 33 is competent to consider this submission, though specific grounds have not been raised in the appeal memo by the State.

9. So far as the first submission which is made by the learned Additional Government Pleader appearing on

behalf of the State on the point of limitation is concerned, in our view, the said submission will have to be accepted. The Apex Court in the case of Satinder Bir Singh (supra) and Full Bench of this Court in the case of Suresh Marutrao Jadhav (supra) have held that the Reference Court cannot condone the delay which is caused in filing the reference before the Collector as the Collector is not a Court. The ratio of the two aforesaid judgments is clearly applicable to the fats of the present case. Merely because this point was not brought to the notice of the Reference Court, would not preclude the Government from raising this point for the first time before this Court. As far as the second contention which is raised by the learned Additional Government Pleader appearing on behalf of the State regarding applicability of unamended provision of section 25(2) of the Acquisition Act in view of the claimant's failure to file his reply to the notice issued under section 9(3)(4) of the Acquisition Act is concerned, the same will have to be accepted as the ratio in the case of State of Maharashtra Vs. Dhanaji Kamalu Joshi in First Appeal No.430 of 1993 decided on 25/08/2005 and 01/09/2005 will be squarely applicable to the facts of the present case.

10. In the result, the First Appeal No.244 of 1989 is allowed. The compensation awarded by the Reference Court is reduced to the compensation which is granted by the Special Land Acquisition Officer and the benefits of the other components under section 23 will be properly reduced, after calculating the same on the basis of the reduced amount. The excess amount which is received by the claimants will have to be refunded with interest @ 6% per annum.

11. For the aforesaid reasons, First Appeal No.75 of 1989 is dismissed.

12. Both the above First Appeals are disposed of in the above terms.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)